

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	<b>SACV 10-659 AG (ANx)</b>	Date	October 1, 2010
Title	SHARON HANEY v. HUNT & HENRIQUES, AND CITIBANK (SOUTH DAKOTA)		

Present: The  
Honorable

ANDREW J. GUILFORD

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: [IN CHAMBERS] ORDER GRANTING MOTION TO  
DISMISS**

Plaintiff Sharon Haney filed a mortgage-related complaint against Hunt & Henriques and Citibank (South Dakota) ("Defendants"). Hunt & Henriques filed an answer but the parties later stipulated to their dismissal. Citibank filed an answer and a counterclaim.

Plaintiff now moves to dismiss the action without prejudice. Under Federal Rule of Civil Procedure 41(a)(1), a plaintiff may voluntarily dismiss without a court order before the defendant files an answer or a motion for summary judgment, or if all parties stipulate to the dismissal. Here, remaining Defendant Citibank has already filed an answer, so Plaintiff cannot voluntarily dismiss without a court order.

Rule 41(a)(2) provides that an action can be dismissed by court order at the plaintiff's request after a responsive pleading has been filed. But if the defendant has filed a counterclaim, "the action may be dismissed *over defendant's objection* only if the counterclaim can remain pending for independent adjudication." *Id.* (emphasis added.)

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Defendant Citibank has not filed an objection to Plaintiff's Motion to Dismiss. Defendant has been afforded sufficient time to object. Therefore, the Court GRANTS Plaintiff's Motion to Dismiss without prejudice.

Initials of  
Preparer

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lmb